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Trustee for the Circuit City Stores, Inc.
Liquidating Trust and Peter Kravitz, as Trustee
for the RSH Liquidating Trust*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE OPTICAL DISK DRIVE ANTITRUST
LITIGATION**

Master File No.: 3:10-md-2143 RS

Case Numbers: 3:15-cv-03248-RS
3:15-cv-06325-RS

This document relates to:

**DECLARATION OF ALAN S. FRANKEL,
IN OPPOSITION TO DEFENDANTS'
JOINT MOTION FOR SUMMARY
JUDGMENT AGAINST CIRCUIT CITY
TRUST AND RADIOSHACK TRUST**

Siegel v. Sony Corporation, et al.
No. 3:15-cv-03248-RS

Kravitz v. Sony Corporation, et al.
No. 3:15-cv-06325-RS

Date: September 26, 2017
Time: 9:00 a.m.
Location: Courtroom 3, 17th Floor
Judge: Honorable Richard Seeborg

**PUBLIC VERSION OF DOCUMENT PREVIOUSLY FILED UNDER
SEAL PURSUANT TO COURT ORDERS [DKT. NOS. 2721 & 2773]**

1 I, Alan S. Frankel, declare as follows:

2 1. I was retained by counsel representing the Circuit City and RadioShack trustees to
3 calculate the amount of overcharges on optical disk drive products attributable to the optical disk
4 drive price-fixing conspiracy, and I provided overcharge subtotals for each product category. In
5 making these calculations, I relied on the optical disk drive overcharge percentage opinion
6 rendered by Dr. James T. McClave, another expert retained by counsel representing the Circuit
7 City and RadioShack trustees, and I applied Dr. McClave's 13.5% overcharge percentage across
8 the spectrum of drives for which Dr. McClave has opined that the overcharge percentage is
9 properly applied – *i.e.*, for optical disk drives used in all optical disk drive products for which
10 Circuit City and RadioShack claim damages. I have calculated aggregate damages at issue for all
11 categories of drives in the case as between \$71.1 million and \$81.7 million, after taking into
12 account the decision by the Circuit City and RadioShack trustees to drop their claims relating to
13 the plaintiffs' purchases of audio players and combo TVs.

14 2. Nothing in this declaration is intended to alter or depart from the analysis and
15 conclusions that I presented in my detailed expert reports (opening and rebuttal) and two
16 depositions (opening and rebuttal). I stand by my prior testimony. I submit this declaration to
17 summarize certain aspects of the testimony that I will give at trial.

18 3. I have a Ph.D. in economics from the University of Chicago, and have researched,
19 written about, and consulted in this field for several decades. I am a Senior Editor of the Antitrust
20 Law Journal, the leading law review devoted to economic and legal issues arising in antitrust,
21 competition and consumer protection disputes, and have served on the Editorial Board of the
22 Journal since 1996. I am a member of the U.S. Advisory Board of the Loyola University Chicago
23 Institute for Consumer Antitrust Studies, and an Adjunct Professor at the Loyola University
24 Chicago School of Law, where I teach a course in Law & Economics.

25 4. The process of computing damages in a price-fixing case such as this is, broadly
26 speaking, two-fold. One task typically involves an analysis of prices charged by the defendants
27 and their co-conspirators, and the construction of an appropriate multiple regression model (or
28

1 other methodology) from which an overcharge percentage can be determined. Here, that task was
2 completed by Dr. McClave, whose work is described in his reports and deposition testimony.
3 Another task involves an analysis of the volume of plaintiffs' purchases that were subject to
4 overcharges, and the application of the overcharge percentage to such purchases. That was my
5 task in this case – along with an intermediate step, an analysis of the passing on of overcharges by
6 optical disk drive product manufacturers. In undertaking my work, I relied on inputs from Dr.
7 McClave: (1) his determination that optical disk drive prices were elevated by 13.5% due to the
8 conspiracy; (2) his opinion that this 13.5% figure applies to all categories of drives at issue in this
9 case; and (3) his tabulation of average prices of drives of various types, by month, during the
10 conspiracy.

11 5. I determined the quantity of optical disk drive products purchased by Circuit City
12 and RadioShack and applied Dr. McClave's 13.5% overcharge figure, multiplied by the average
13 price of the drives, to that quantity of purchases. For standalone drives and computer drives
14 purchased by Circuit City and RadioShack, aggregate damages range from \$22.2 million to \$26.4
15 million. (As is not uncommon in these matters, damages are expressed as a range because they
16 can vary depending on alternative adjustments.) For these and other optical disk drive products, I
17 provided subtotals for each product category (e.g., desktop computers, notebook computers,
18 standalone drives, DVD players, etc.). I initially included damages for audio player drives
19 (ranging from \$9.3 million to \$11.0 million) and combo TV drives (\$0.48 million to \$0.52
20 million), but I understand that the Circuit City and RadioShack trustees have dropped their claims
21 with respect to these two product categories; as a result, my computations for these products are
22 moot. For Blu-Ray player drives purchased by Circuit City and RadioShack, aggregate damages
23 range from \$7.8 million to \$8.0 million; for DVD player drives, from \$30.5 million to \$35.7
24 million; and for game console drives, from zero (if pass-on must be taken into account)¹ to \$11.5

26 I understand that District Judge Tigar has determined that pass-on should not be taken into
27 account in computing damages; rather, damages should equal the full amount of the

(FOOTNOTE CONTINUED)

1 million. Together, the aggregate damages for players and consoles are between \$48.9 million and
2 \$55.2 million, and aggregate damages for all categories of products – standalone drives, computer
3 drives, and player/console drives – are between \$71.1 million and \$81.7 million.

4 6. At my initial deposition in this case, I was shown photographs that are included in
5 the declaration in support of defendants' motion. These photographs suggest that a subset of
6 devices (such as the clock radio) may not include a preassembled optical disc drive that was the
7 subject of a separate intra- or inter-defendant transaction. That being the case, and given that I am
8 not (and have not professed to be) an expert in engineering, I was careful to describe the
9 calculations set out in my rebuttal report as contingent on the ultimate establishment of a fact for a
10 particular category of products: that the category is typified by the incorporation of preassembled
11 optical disk drives that were the subject of intra- or inter-defendant transactions. I explained this
12 conditionality at length in my rebuttal deposition testimony, where I noted that damages
13 calculation are quite often based on the establishment at trial of particular facts or legal conditions.

14 7. I understand that the Circuit City and RadioShack trustees have elected to drop
15 claims for damages for purchases of audio players (which were the subject of pictures shown to
16 me at my deposition) and combo TVs. Accordingly, my revised calculation of the aggregate
17 damages at issue for standalone, computer, and player drives would be \$71.1 million to \$81.7
18 million.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and was executed this 10th day of August 2017.

An S. Frankel

overcharges. Based upon that legal principle, the remainder of this declaration presents damages based on the full amount of overcharges on drives for consoles.